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| JONES DAY<br>222 East 41st Street<br>New York, NY 10017-6702 |             |                      | EXAMINER<br>LUDWIG, PETER L |                        |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                               |                              |  |
|------------------------------|-------------------------------|------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>09/924,463 | Applicant(s)<br>LITKE ET AL. |  |
|                              | Examiner<br>Peter L. Ludwig   | Art Unit<br>3621             |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-17 and 27-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 27-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/18/2004</u>  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

*Acknowledgements*

1. This Office Action has been given Paper No. 20070530 for reference purposes only.
2. This Office Action is in correspondence to the RCE filed on 03/27/2007.
3. Claim 14 has been amended and claims 42-48 have been added.
4. Claims 14-17 and 27-48 are currently pending and have been examined fully.

*Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 14, 27, 35 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 14 is rejected as lacking antecedent basis for the phrase “the group consisting of” in line 8 and 10. A similar group has not been mentioned prior to these groups so Examiner is unclear what Applicant is referring to. In line 7 of claim 14, the phrase “the computer network” is unclear because a computer network has not been mentioned above. Therefore, there is also a lack of antecedent basis for the computer network.

b. Claim 27 is rejected as being vague and indefinite due to the phrase “submitting the order form through the at least one computer”. The Examiner is unclear as to where the submission is going after being submitted. Is the order form going to the government? Is it going to the manufacturing facility or the warehouse?

c. Claim 35 is rejected as lacking antecedent basis due to the phrase “the computer network”. The computer network was not mentioned prior to this.

d. Claim 40 is rejected as being vague and indefinite due to the word “pattern” inserted into the claim limitation. Is this pattern proofing or something else?

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 14-17, 27-31, 41, 46, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (U.S. Publication No. 2001/0020222 A1) in view of Rhodes (U.S. Patent No. 5,887,363).

9. As per claim 14, Lee clearly teaches a method for soliciting or placing at least one order for footwear, comprising the steps of:

- **providing at least one computer (abstract);**
- **providing an order form through the at least one computer to be accessed by at least one user from a remote site (Fig. 1 – elements 15 and 20);**
- **measuring the size of the user's foot to provide a size parameter using a device connected to the computer network (Fig. 2-3; ¶ [0006]; ¶ [0041]-[0052]);**
- **providing a first parameter of personalization (¶ [0012]);**
- **entering the first and second parameters on the order form (¶ [0012]);**
- **submitting the order form through the computer network (¶ [0012]);**

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- **receiving the foot wear according to each parameter in the order form** (§ [0054], lines 18-19).

Lee does not teach providing a first parameter of a cleat type and providing a second parameter consisting of traction level and cushioning.

However, Rhodes does teach a “Golf Shoe” that allows for such accessories as cleat type (col. 20, lines 27-30), various traction levels (col. 20, lines 27-30; or, col. 20, lines 57-65; There are various options to further enhance the traction of a player’s golf shoe, as noted in Rhodes, anything from the cleat type to the construction of tongue or the shoe, to the way the sole is made can be associated with various traction levels) and cushioning (col. 20, lines 31-35 ;col. 20, lines 52-56; The Examiner is interpreting “cushioning” to be associated with the construction of the shoe, and the specific materials the insole is constructed from), among other things.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the options associated with the “Golf Shoe” of Rhodes with the customization of the footwear industry of Lee for the useful purpose of allowing the user to personalize his/her golf shoe. As one of ordinary skill in the art knows, everyone has different feet and prefers various things while walking on them. The teachings of Rhodes and Lee clearly teach, in combination, that all of these features are old and well known in the art. Since everyone’s feet are different in some way, one of ordinary skill in the art would have been motivated to combine these two references to provide the customer with the maximum amount of options while selecting a custom golf shoe, and therefore maximize customer satisfaction of the buying and using experience.

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10. As per claim 15, Lee and Rhodes clearly teach the method according to claim 14 as described above. Lee further teaches **wherein the step of measuring the size includes providing one of the following measuring devices: laser-sizing device (Fig. 6; ¶ [0041]), photographic-sizing device, graduated-sizing device.**

11. As per claim 16, Lee and Rhodes clearly teach the method according to claim 14 as described above. Lee does further teach **wherein two computers are in communication, and wherein the order is passed from one computer to the other (Fig. 1 – elements 15 and 20; ¶ [0040];** The Examiner is interpreting the “warehouse” to be a building where goods are stored. Therefore, the “manufacturing facility” where the custom shoes are produced, it is inherent that the manufacturing facility must store some goods if it is to produce such shoes quickly and efficiently.).

12. As per claim 17, Lee and Rhodes clearly teach the method according to claim 14 as described above. Lee further teaches **wherein the step of providing at least one computer further includes providing a third computer (Fig. 1 – element 40; ¶ [0040]) at a manufacturing facility in communication with the first and second computers.**

13. As per claim 27, Lee clearly teaches a method for soliciting or placing at least one order for golf shoes, comprising the steps of:

- **providing at least one computer (abstract);**
- **providing an order form through the at least one computer to be accessed by at least one user from a remote site (Fig. 1 – elements 15 and 20);**

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- **providing at least one measuring device connected to the at least one computer for measuring a size parameter** (Fig. 2-3; ¶ [0006]; ¶ [0041]-[0052]);
- **inputting the size parameter on the order form** (¶ [0012]);
- **submitting the order form through the at least one computer** (¶ [0012]);
- **receiving the golf shoes according to each parameter on the order form** (¶ [0012], lines 18-19).

Lee does not teach customizing the shoe with respect to the cleat type.

However, Rhodes does teach customizing the shoe with respect to the cleat type (col. 20, lines 27-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the references of Rhodes with Lee for the useful purpose of giving the customer the option to select use of various kinds of spikes. As one of ordinary skill in the art would know, this would be advantageous because at some golf courses a golfer cannot use metal spikes, and therefore would use an alternative, plastic, etc. Not only do some courses not allow various kinds of cleats, but also one might use different cleats in different weather. For example, in rain the golfer might use metal spikes (if allowed) due to an increase in traction on the wet grass, but in dry weather use the “soft spikes” or plastic because it is more comfortable and the golfer does not need the extra traction on the dry ground.

14. As per claim 28, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches **wherein the step of providing at least one computer further comprises providing a first computer at a store location and a second computer at a warehouse in communication with the first computer** (Fig. 1 – elements 15 and 20; ¶ [0040];



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The Examiner is interpreting the “warehouse” to be a building where goods are stored.

Therefore, the “manufacturing facility” where the custom shoes are produced, it is inherent that the manufacturing facility must store some goods if it is to produce such shoes quickly and efficiently).

15. As per claim 29, Lee and Rhodes clearly teach the method of claim 28 as described above. Lee further teaches **wherein the step of providing at least one computer further comprises providing a third computer at a manufacturing facility in communication with the first and second computers** (Fig. 1 – element 40; ¶ [0040]).

16. As per claim 30, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches **wherein the step of providing at least one measuring device further comprises providing at least one of a laser-sizing device** (Fig. 6; ¶ [0041]), a photographic-sizing device, or a graduated-sizing device.

17. As per claim 31, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches **the step of providing the footwear according to the order form by manufacturing the footwear at a manufacturing facility at a location different from the remote site** (Fig. 1 – element 20 and 40; ¶ [0040]).

18. As per claim 41, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee does not further teach wherein the cleat type comprises metal or plastic.

However, Rhodes does teach customizing the shoe with respect to the cleat type (col. 20, lines 27-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the references of Rhodes with Lee for the useful purpose of giving the

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customer the option to select use of various kinds of spikes. As one of ordinary skill in the art would know, this would be advantageous because at some golf courses a golfer cannot use metal spikes, and therefore would use an alternative, plastic, etc. Not only do some courses not allow various kinds of cleats, but also one might use different cleats in different weather. For example, in rain the golfer might use metal spikes (if allowed) due to an increase in traction on the wet grass, but in dry weather use the “soft spikes” or plastic because it is more comfortable and the golfer does not need the extra traction on the dry ground.

19. As per claim 46, Lee and Rhodes clearly teach the method of claim 14 as described above. Lee does further teach **wherein prior to the step of receiving the golf shoes, the method further comprises the steps of translating the size, first, and second parameters into manufacturing control data and using the manufacturing control data to create the golf shoes (i.e. ¶ [0012]).**

20. As per claim 47, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches **wherein prior to the step of receiving the golf shoes, the method further comprises the steps of translating each parameter into manufacturing control data and using the manufacturing control data to create the golf shoes (i.e. ¶ [0012]).**

21. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Rhodes in view of Hersey (Reference U on attached PTO-892 form).

22. As per claim 32, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them

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into the manufactured shoe (§ [0012]). However, Lee does not explicitly teach the selection of an insole and outsole material of the shoe.

Hersey does teach the selecting of the **insole** (Anatomy of Hersey – “Vamp” – “This is the cloth part of the shoe, and we can make it with either nylon mesh or 200 denier nylon. The mesh is more breathable but a little heavier, so we usually use the 200 where the weight of the shoe is a concern.”) and **outsole** (Anatomy of Hersey – “Outersole – “The thinner piece of black rubber on the very bottom of the shoe is the *outersole*. It will vary in nature depending upon what the shoe is going to be used for. A racing flat, for example, will have a blown rubber Vibram® outersole that is light in weight and designed for good traction on even surfaces but not on icy roads or trails. Our standard carbon rubber outersole is a medium-weight, all-purpose sole ideal for trainers and walking shoes, and it can handle moderately uneven terrain. For hiking and running on unpredictable off-road and winter surfaces, our heavier deep-lug sole is probably in order.”).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Hersey with Lee and Rhodes for the useful purpose of allowing the user to customize their shoes for specific events. For example, as taught by Hersey, a standard shoe, a racing-flat, and hiking and running shoes will have different outsoles from which the user can choose at his/her convenience.

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23. Claims 33 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (U.S. Publication No. 2001/0020222 A1) and Rhodes (U.S. Patent No. 5,887,363) in view of Rudy (U.S. Patent No. 6,127,010).

24. As per claim 33, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). However, Lee does not further teach explicitly wherein the customer can select various forms of cushioning for the shoe.

Rudy does teach selecting a cushioning type for a shoe (Fig. 1 and 2), wherein the choices of cushioning comprise rubber plugs (col. 6, lines 27-40), air plugs (col. 5, lines 58-61), gel cushions (col. 8, lines 18-26), foam (col. 6, lines 41-49), or mixtures thereof.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Rudy with Lee and Rhodes for the useful purpose of giving the customer the opportunity to maximize his customization of his shoe. While each cushioning has its own advantage, its cushioning could be chosen for various kinds of golfing days, shoe type and personal preference, as taught by Rudy.

25. As per claim 42, Lee and Rhodes clearly teach the method of claim 14 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). However, Lee does not further teach explicitly wherein the customer can select various forms of cushioning for the shoe.

Rudy does teach selecting a cushioning type for a shoe (Fig. 1 and 2), wherein the choices of cushioning comprise rubber plugs (col. 6, lines 27-40), air plugs (col. 5, lines 58-61), gel cushions (col. 8, lines 18-26), foam (col. 6, lines 41-49), or mixtures thereof.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Rudy with Lee and Rhodes for the useful purpose of giving the customer the opportunity to maximize his customization of his shoe. While each cushioning has its own advantage, its cushioning could be chosen for various kinds of golfing days, shoe type and personal preference, as taught by Rudy.

26. Claims 34 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Rhodes in view of Allen (U.S. Patent No. 5,144,899).

27. As per claim 34, Lee and Rhodes clearly teach the method of claim 27 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee further teaches taking in the selected custom preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee does not however teach the step of: providing a custom indicia while choosing the custom indicia application method from the group consisting of punching, embroidering, printing, and inscribing; and inputting the custom indicia application method on the order form.

Allen does teach the method of providing custom indicia (col. 5, lines 37-53) with means to embroider (abstract), print (abstract), punch (col. 5, lines 37-53) or inscribe (Fig. 5 - 6) the indicia onto a textile.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Allen with Lee and Rhodes for the useful purpose of allowing the user to customize a program and turn the program into a result which can be translated via embroidery, printing, punching and inscribing, as taught by Allen.

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28. As per claim 43, Lee and Rhodes clearly teach the method of claim 14 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee does not however teach the step of: providing a custom indicia while choosing the custom indicia application method from the group consisting of punching, embroidering, printing, and inscribing; and inputting the custom indicia application method on the order form.

Allen does teach the method of providing custom indicia (col. 5, lines 37-53) with means to embroider (abstract), print (abstract), punch (col. 5, lines 37-53) or inscribe (Fig. 5 - 6) the indicia onto a textile.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Allen with Lee and Rhodes for the useful purpose of allowing the user to customize a program and turn the program into a result which can be translated via embroidery, printing, punching and inscribing, as taught by Allen.

29. Claims 35-37 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Allen.

30. As per claim 35, Lee clearly teaches a method for placing an order for golf shoes, comprising the steps of:

- **providing at least one computer (abstract);**
- **providing an order form through the at least one computer to be accessed by a user from a remote site (Fig. 1 – elements 15 and 20);**

- **measuring the user's foot size to provide a size parameter using a device connected to the computer** (Fig. 2-3; ¶ [0006]; ¶ [0041]-[0052]);
- **submitting the order form through the computer network** (¶ [0012]);
- **receiving the golf shoes according to each parameter in the order form** (¶ [0012], lines 18-19).

Lee does not teach the step of providing a custom indicia.

However, Allen does teach the step of providing a custom indicia (col. 5, lines 37-53).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Allen with Lee for the useful purpose of allowing the user to customize a program and turn the program into a result which can be translated via embroidery, printing, punching and inscribing, as taught by Allen.

31. As per claim 36, Lee and Allen clearly teach the method of claim 35 as described above. Lee further teaches taking in the selected custom preferences of the customer, and inputting them into the order form of the manufactured shoe (¶ [0012]). Lee does not explicitly teach the step of providing a custom indicia application method and inputting the indicia on the order form.

However, Allen does teach the method of providing custom indicia (col. 5, lines 37-53) with means to embroider (abstract), print (abstract), punch (col. 5, lines 37-53) or inscribe (Fig. 5 - 6) the indicia onto a textile.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Allen with Lee for the useful purpose of allowing the user to customize a program and turn the program into a result which can be translated via embroidery, printing, punching and inscribing, as taught by Allen.

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32. As per claim 37, Lee and Allen clearly teach the method of claim 36 as described above. Lee further teaches taking in the selected custom preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee does not however teach the step of: providing a custom indicia while choosing the custom indicia application method from the group consisting of punching, embroidering, printing, and inscribing; and inputting the custom indicia application method on the order form.

Allen does teach the method of providing custom indicia (col. 5, lines 37-53) with means to embroider (abstract), print (abstract), punch (col. 5, lines 37-53) or inscribe (Fig. 5 - 6) the indicia onto a textile.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Allen with Lee for the useful purpose of allowing the user to customize a program and turn the program into a result which can be translated via embroidery, printing, punching and inscribing, as taught by Allen.

33. As per claim 48, Lee and Allen clearly teach the method of claim 35 as described above. Lee further teach **wherein prior to the step of receiving the golf shoes, the method further comprises the steps of translating each parameter into manufacturing control data; and using the manufacturing control data to create the golf shoes (i.e. § [0012]).**

34. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Allen in view of Rudy.

35. As per claim 38, Lee and Allen clearly teach the method of claim 35 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them into



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the manufactured shoe (§ [0012]). However, Lee does not further teach explicitly wherein the customer can select various forms of cushioning for the shoe.

Rudy does teach selecting a cushioning type for a shoe (Fig. 1 and 2), wherein the choices of cushioning comprise rubber plugs (col. 6, lines 27-40), air plugs (col. 5, lines 58-61), gel cushions (col. 8, lines 18-26), foam (col. 6, lines 41-49), or mixtures thereof.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Rudy with Lee and Rhodes for the useful purpose of giving the customer the opportunity to maximize his customization of his shoe. While each cushioning has its own advantage, its cushioning could be chosen for various kinds of golfing days, shoe type and personal preference, as taught by Rudy.

36. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Allen in view of Hersey.

37. As per claim 39, Lee and Allen clearly teach the method of claim 35 as described above. Lee further teaches taking in the selected preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). However, Lee does not explicitly teach the selection of an insole and outsole material of the shoe.

Hersey does teach the selecting of the **insole** (Anatomy of Hersey – “Vamp” – “This is the cloth part of the shoe, and we can make it with either nylon mesh or 200 denier nylon. The mesh is more breathable but a little heavier, so we usually use the 200 where the weight of the shoe is a concern.”) and **outsole** (Anatomy of Hersey – “Outersole – “The thinner piece of black rubber on the very bottom of the shoe is the *outersole*. It will vary in nature depending upon

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what the shoe is going to be used for. A racing flat, for example, will have a blown rubber Vibram® outersole that is light in weight and designed for good traction on even surfaces but not on icy roads or trails. Our standard carbon rubber outersole is a medium-weight, all-purpose sole ideal for trainers and walking shoes, and it can handle moderately uneven terrain. For hiking and running on unpredictable off-road and winter surfaces, our heavier deep-lug sole is probably in order.”).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Hersey with Lee and Allen for the useful purpose of allowing the user to customize their shoes for specific events. For example, as taught by Hersey, a standard shoe, a racing-flat, and hiking and running shoes will have different outsoles from which the user can choose at his/her convenience.

38. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Allen in view of Baker et al. (U.S. Patent No. 6,861,396 B2).

39. As per claim 40, Lee and Allen clearly teach the method of claim 35 as described above. Lee further teaches taking in the selected custom preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee does not however teach the step of selecting a material treatment from the group consisting of a temperature responsive treatment, stain-proofing, and water-proofing.

Baker et al. does teach the step of selecting a material treatment for a new shoe (col. 5, lines 31-40; col. 5, lines 61-67) from the group consisting of a temperature responsive treatment

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(col. 6, lines 66 – col. 7, line 14), stain-proofing (col. 5, lines 23-30), and water-proofing (col. 5, lines 23-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Baker et al. with Lee and Allen or the useful purpose of allowing the customer to pre-treat his/her shoes prior to handling them themselves. As taught by Baker et al., there has long been a problem since the advent of shoes of traditional attempts at cleaning soiled and/or stained shoes. This material treatment will help to minimize the amount of times the user will have to do this to their shoes, and therefore would be advantageous to offer to the customer buying the customized shoes.

40. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Rhodes in view of Baker et al.

41. As per claim 44, Lee and Rhodes clearly teach the method of claim 14 as described above. Lee further teaches taking in the selected custom preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee does not however teach the step of selecting a material treatment from the group consisting of a temperature responsive treatment, stain-proofing, and water-proofing.

Baker et al. does teach the step of selecting a material treatment for a new shoe (col. 5, lines 31-40; col. 5, lines 61-67) from the group consisting of a temperature responsive treatment (col. 6, lines 66 – col. 7, line 14), stain-proofing (col. 5, lines 23-30), and water-proofing (col. 5, lines 23-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference of Baker et al. with Lee and Allen or the useful purpose of allowing the customer to pre-treat his/her shoes prior to handling them themselves. As taught by Baker et al., there has long been a problem since the advent of shoes of traditional attempts at cleaning soiled and/or stained shoes. This material treatment will help to minimize the amount of times the user will have to do this to their shoes, and therefore would be advantageous to offer to the customer buying the customized shoes.

42. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Rhodes in view of Cisneros (U.S. Patent No. 6,092,605).

43. As per claim 45, Lee and Rhodes clearly teach the method of claim 14 as described above. Lee further teaches taking in the selected custom preferences of the customer, and inputting them into the manufactured shoe (§ [0012]). Lee does not further teach wherein the step of providing a second parameter comprises selecting a traction level from the group consisting of ridges, grooves, and projections.

Cisneros does teach a “horseshoe traction device and system” which teaches a traction device consisting of ridges (col. 2, lines 44-57), grooves (col. 2, lines 44-57), and projections (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the horseshoe traction device of Cisneros with that of an actually golf shoe corresponding to the combination of Lee and Rhodes for the useful purpose of providing the user with traction while playing a sport, or simply while walking around. It is advantageous from a

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business perspective to offer these options to users because you can accommodate more people with more options, because everyone has their own preferences and will be willing to buy the product if their preferences are being offered.

***Response to Arguments***

44. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter L. Ludwig whose telephone number is 571-270-1365. The examiner can normally be reached on Mon-Fri 7:30-5:00, 1st Fri. Off, 2nd Fri. 7:30-4:00.

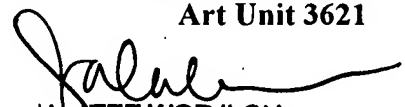
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Peter L. Ludwig  
Patent Examiner  
Art Unit 3621

06/05/2007



JALTEE WORJLOH  
PRIMARY EXAMINER